

### **REMARKS**

In view of the following remarks, the Examiner is requested to allow claims 1-4, 6-25, 29-33, 38-42 and 85, the only claims pending and under examination in this application.

Claim 1 has been amended to indicate that the chromic change agent undergoes an intrinsic color change. Support for this amendment can be found through out the specification and claims as originally filed. Specifically, support can be found at page 4, lines 4 to 5. Accordingly, no new matter has been added.

As no new matter has been added by way of this amendment, entry thereof by the Examiner is respectfully requested.

### ***Claim Rejections 35 U.S.C. § 102***

Claims 1-3, 6, 7 and 12-14 have been rejected under 35 USC § 102(b) as allegedly being anticipated by Hood (USPN 4,001,446).

According to the MPEP a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. See MPEP 2131.

An element of Claim 1 as amended is a chromic change agent that undergoes an intrinsic color change in response to at least one physical or chemical triggering mechanism.

Hood discloses the reaction of carbon monoxide with iron contained within a dog food product (i.e., meat) so as to induce and stabilize a red color of the dog food. The reaction of iron in the protein of the meat product with carbon monoxide saturates the protein causing the color of the meat product to change. The color change, therefore, is due to the binding of the carbon monoxide to iron that is within the protein of the meat. Hence, the chromic change agent (i.e., carbon monoxide) does not undergo an intrinsic color change, rather the color change is in the meat product which is due to the reaction of carbon monoxide with iron.

Accordingly, Hood does not teach every element of the claims as amended. Namely, Hood does not teach a chromic change agent that undergoes an intrinsic color change. Because Hood does not teach every element of the rejected claims it fails to anticipate Claims 1-3, 6, 7 and 12-14 and the Applicants respectfully request that the 35 USC § 102(b) rejection be withdrawn.

### ***Claim Rejections – 35 U.S.C. § 103(a)***

Claims 1-7, 12, 15-25, 29-33 and 38-42 have been rejected under 35 USC § 103(a) as allegedly being unpatentable over Patel (USPN 4,208,186).

According to the MPEP § 706.02 (j), to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

An element of the rejected claims is a chromic change agent that undergoes a color change wherein the entire composition is ingestible.

Patel discloses a device for monitoring the time-temperature history of an article. The device includes a container that is constructed from polyester or nylon. See column 6, lines 43 – 52. The device further includes an inactive form of a diacetylene and an activating solvent. The device is added to a food item and is meant to be taken off of the food item before ingestion. See column 8, lines 34 to 37. Accordingly, Patel does not teach or suggest an ingestible composition wherein the entire composition is ingestible.

Additionally, one would not ingest the device disclosed in Patel because the activating solvent composition contained therein includes one or more of p-dioxane, dimethylformamide and/or pyridine. One would not ingest any of p-dioxane, dimethylformamide and/or pyridine because they are known carcinogens. Accordingly, Patel fails to teach or suggest all the elements of the claimed invention.

Therefore, in light of the above, the Applicants' contend that *prima facie* case of obviousness has not been established and respectfully request that the 35 USC § 103(a) rejection of Claims 1-7, 12, 15-25, 29-33 and 38-42 be withdrawn.

Claim 85 has been rejected under 35 USC § 103(a) as allegedly being unpatentable over Patel (USPN 4,208,186) in view of Rubner *et al.* (USPN 4,721,769).

As stated above, an element the rejected claims is a composition that includes a chromic change agent that undergoes a color change wherein the entire composition is ingestible. Patel does not teach or suggest a composition wherein the entire composition is ingestible because the composition disclosed by Patel is a device that is meant to be removed from a food item before consumption of the food item. Accordingly, Patel is deficient in that it does not teach or suggest a composition wherein the entire composition is ingestible. As Rubner was cited for its disclosure of polydiacetylenes that exhibit reversible color changes it fails to remedy the deficiencies of Patel. Therefore, a *prima facie* case of obviousness has not been established and the

Applicants respectfully request that the 35 USC § 103(a) rejection of Claim 85 be withdrawn.

Claims 10 and 11 have been rejected under 35 USC § 103(a) as allegedly being unpatentable over Patel (USPN 4,208,186) in view of Charych (USPN 6,468,759).

As stated above, an element the rejected claims is a composition that includes a chromic change agent that undergoes a color change wherein the entire composition is ingestible. Patel is deficient in that it does not teach or suggest a composition wherein the entire composition is ingestible. As Charych was cited for its disclosure of using diacetylene polymers and biopolymeric materials for detecting enzymatic reactions, it fails to remedy the deficiencies of Patel. Therefore, a *prima facie* case of obviousness has not been established and the Applicants respectfully request that the 35 USC § 103(a) rejection of Claims 10 and 11 be withdrawn.

Claims 9 and 85 have been rejected under 35 USC § 103(a) as allegedly being unpatentable over Patel (USPN 4,208,186) in view of Patel (USPN 6,472,214).

As stated above, an element the rejected claims is a composition that includes a chromic change agent that undergoes a color change wherein the entire composition is ingestible. Patel '186 is deficient in that it does not teach or suggest a composition wherein the entire composition is ingestible. As Patel '214 was cited for its disclosure that polymerized diacetylenes undergo reversible color changes when contacted with an activator solvent, it fails to remedy the deficiencies of Patel '186. Therefore, a *prima facie* case of obviousness has not been established and the Applicants respectfully request that the 35 USC § 103(a) rejection of Claims 9 and 85 be withdrawn.

Claims 29-33, and 38-42 have been rejected under 35 USC § 103(a) as allegedly being unpatentable over Patel (USPN 4,208,186) in view of Patel (USPN 5,053,339).

As stated above, an element the rejected claims is a composition that includes a chromic change agent that undergoes a color change wherein the entire composition is ingestible. Patel '186 is deficient in that it does not teach or suggest a composition wherein the entire composition is ingestible. As Patel '339 was cited for its disclosure of perishable foods with which a color change agent may be associated, it fails to remedy the deficiencies of Patel '186. Therefore, a *prima facie* case of obviousness has not been established and the Applicants respectfully request that the 35 USC § 103(a) rejection of Claims 29-33, and 38-42 be withdrawn.

### ***Double Patenting***

Claims 1-4, 6-25, 29-33, 38-42, and 85 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of US Patent No. 6,866,863.

Accordingly, filed herewith is the requisite terminal disclaimer, in view of which the Applicant respectfully requests these rejections be withdrawn.

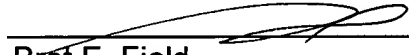
**CONCLUSION**

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number SGAN-004CIP.

Respectfully submitted,  
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Date: 4. 6. 06

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Enclosure(s): Terminal Disclaimer as to U.S. Patent No. 6,866,863

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